

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT HAAG and
KATHLEEN HAAG,
Plaintiffs

V.

INTERNAL REVENUE SERVICE and
UNITED STATES OF AMERICA,
Defendants

CIVIL ACTION
NO. 04-12344-REK

Memorandum and Order

November 28, 2005

I. Pending Matters

Pending for decision are matters related to the following filing:

(1) The Plaintiffs' Motion to Amend Their Complaint (Docket No. 8, filed October 3, 2005).

II. Factual and Procedural Background

Plaintiffs Robert and Kathleen Haag are a married couple residing in Massachusetts. Mr. Haag owned Robert F. Haag and Associates, Inc. (“Corporation”), which plaintiffs assert carried on the trade or business of providing financial advice and financial products, including the sale of life insurance. In 1991, defendant Internal Revenue Service (“IRS”) assessed additional taxes against plaintiffs for the tax years 1985, 1986, and 1987, due to its determination that the Corporation was a nullity. This assessment created a federal lien on

plaintiffs' property pursuant to Section 32 of the Internal Revenue Code ("IRC"). Plaintiffs allege that the IRS failed to notify them of their right to a hearing pursuant to Sections 6320 and 6330 of the IRC when the IRS revoked its release of the lien and refiled the lien on June 30, 2004.

Plaintiffs are before this court as defendants in a related case, United States v. Haag, Civil Action No. 02-12490-REK. They filed their complaint in this case on November 4, 2004. (Docket No. 1). In their original complaint, they named four defendants: Robert Murphy, an employee of the IRS; John Keach, also an employee of the IRS; the IRS; and the United States. They requested declaratory and injunctive relief and also brought claims against defendants Murphy and Keach pursuant to Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), for failing to provide notice of plaintiffs' right to a hearing while acting under color of the law. On December 21, 2004, I consolidated the two cases and stated that the earlier case, United States v. Haag, was the lead case.

Defendants filed their answer on March 16, 2005. (Docket No. 5.) Plaintiffs then filed their motion to amend the complaint on October 3, 2005, which they accompanied with a copy of the proposed Amended Complaint. (Docket No. 9.) Defendants have not filed a timely opposition to this motion.

III. Analysis

I will note at the outset that, although I am considering this motion in the context of Civil Action No. 04-12344-REK, all future filings in this case must be filed with the lead case, which is Civil Action No. 02-12490-REK.

Plaintiffs move this court for leave to file an amended complaint in which they will

replace their claims against defendants Murphy and Keach with a claim pursuant to Section 7433 of the IRC. Rule 15(a) of the Federal Rules of Civil Procedure requires “leave of court or...written consent of the adverse party” to amend a pleading once the responsive pleading has been served, but the Rule provides that “leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Plaintiffs assert that counsel for the United States does not oppose the motion for leave to amend and note that plaintiffs informed this court of their intent to file a claim pursuant to Section 7433 on April 1, 2005. For these reasons, as well as the absence of opposition from any of the defendants, I hereby allow plaintiffs’ motion.

ORDER

For the foregoing reasons, it is ORDERED:

(1) The Plaintiffs’ Motion to Amend Their Complaint (Docket No. 8, filed October 3, 2005) is ALLOWED.

/s/Robert E. Keeton
Robert E. Keeton
Senior United States District Judge